

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: FLINT WATER CASES Case No. 16-10444

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VIDEO DISCOVERY AND CASE MANAGEMENT CONFERENCE
BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE
and
THE HONORABLE JOSEPH J. FARAH
GENESEE COUNTY CIRCUIT COURT JUDGE
Virtual Hearing Via Zoom - Wednesday, July 15, 2020

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1 Wednesday, July 15, 2020

2 2:08 p.m.

3 -- --- --

4 THE COURT: So I'll call the case. This is in re
5 Flint Water Litigation. We're on the record.

6 And, Darlene, do you want to begin by reading the
7 names that you see and have took down or do you want people to
8 announce themselves?

9 (Appearances read by reporter.)

10 THE COURT: Thank you.

11 This is the date and time that was set aside to
12 address some nondispositive issues, discovery disputes and
13 timing and scheduling and things of that nature. First I want
14 to welcome back Judge Farah.

15 And thank you for taking the time to be here.

16 JUDGE FARAH: Thank you, Judge.

17 THE COURT: It's good to see you. And I should just
18 pause now and ask if there is anything you wanted to add to the
19 list of what we'll be discussing today?

20 Anything you want to add to this, Judge Farah?

21 JUDGE FARAH: No. Not really. It's been not too long
22 since we last got together. I will say I believe, looking at
23 some of the other things I have to do, I will be getting back
24 to opinion writing on these cases the week of July 27th.

25 THE COURT: Okay.

1 JUDGE FARAH: I am going to try to finish some other
2 things and get back to the two or three we have remaining.

3 And I understand we'll be seeing a couple of you by
4 Zoom, most likely, for oral argument, I believe, on August 6th
5 on the individual plaintiffs, I believe it is? And I think the
6 City defendants.

7 Well, we're going to be having argument on some
8 motions that were not necessarily part of Judge Ewell's
9 November 19 ruling, I think need to be decided, for instance.
10 So I'm going to allow oral argument for those the first week of
11 August.

12 (Court reporter clarification.)

13 THE COURT: Okay. Great. And thank you, Darlene.
14 Feel free at any time to let us know. Because doing this whole
15 phonetic thing that you do is remarkable to me. So thank you
16 for breaking in and trying to get that clear now instead of
17 later.

18 Before we move on with the agenda, I wanted to also
19 mention that I asked Debra Greenspan to join us in general for
20 these calls in the event that there's some way she may be able
21 to be of assistance in the process. So she's here with us as
22 well.

23 I think Abigail sent an E-mail out regarding the class
24 plaintiff -- putative class plaintiffs' motion for class
25 certification that was filed on June 30th. And it was filed

1 with portions of it under seal. And as you know, that's
2 prohibited in the Eastern District of Michigan without a
3 pending motion. You have to -- in the confidentiality order
4 that I think is Exhibit C to the CMO.

5 But in any event, it's ECF number 1162-3. And in
6 paragraph nine of that order, there is a process that I think
7 putative class plaintiffs undertook. I'm trying to get to it
8 right now.

9 There is a process for filing materials that -- at
10 paragraph nine says filing protective materials and. And I
11 believe this is what you undertook, Mr. Leopold and Mr. Pitt
12 and others, in filing this because you initially filed a
13 redacted version omitting the protected material that anyone
14 could have designated in the course of a deposition or document
15 production and so on.

16 And I appreciate that you followed that. I can only
17 imagine the amount of time and effort and labor to be very
18 careful to keep track of all that. So I appreciate your work,
19 your associate's work and any supporting staff.

20 However, I remember specifically making sure that
21 paragraph 10 would be in this as well because the Sixth Circuit
22 is enormously clear with the district court that we cannot
23 accept anything filed under seal without an appropriate motion
24 and a careful examination of whether something should be
25 sealed.

1 So paragraph 10 says: "This order does not itself
2 authorize the filing of any documents under seal. Documents
3 may be sealed only if authorized by a separate order of the
4 Court."

5 And those, of course, have to be filed.

6 So I realize that paragraph nine and paragraph 10 are
7 a little bit contradictory, but we -- I guess what I want to
8 know now is the 14 days set forth in paragraph nine has
9 expired. And I only have one motion to seal that was sent by
10 E-mail and that was by putative class members counsel regarding
11 personal identifying information and so on. So I'm assuming
12 that no one else has any matter or statement or sentence or
13 word in this motion that they want sealed?

14 Am I correct in that?

15 Mr. Campbell, are you trying to speak?

16 MR. CAMPBELL: No, Your Honor.

17 THE COURT: I think it was your typewriter brought you
18 to the front.

19 What I would like you to do, Mr. Leopold, is refile
20 it. I want you to file the motion that you sent to Abigail.
21 That Ms. Weiner sent to Abigail. I'd like that motion to seal
22 filed first and simultaneously everything unredacted except for
23 what you have in your motion to seal.

24 And let me ask now, does anyone wish to file a
25 response to the motion to seal?

1 (No response.)

2 THE COURT: Disagreeing with it in any way?

3 Okay. Hearing that no one is going to oppose that,
4 the only question -- I've looked at it and the only question I
5 have is whether there are any conclusions about medical
6 conditions that ought to be in the public domain. So I need to
7 take a look at the -- I think all of the personal addresses and
8 other personally identifying information should be redacted.
9 The Sixth Circuit supports that, endorses it as long as it's
10 been line by line verified that that's what it is.

11 I have not had a chance to carefully look at the
12 medical information you want redacted and in light of the fact
13 that plaintiffs have put their medical conditions before the
14 Court and before the public by filing the case, I just want to
15 be careful to look at that another time. So what we'll do is
16 put that on the agenda for a decision at our next conference.
17 I need to look at the calendar to know exactly.

18 And I anticipate granting your motion, but I want to
19 be abundantly careful before doing that.

20 Is our next hearing on the ...

21 29th.

22 So I'll have it on the record on the 29th, a decision
23 about that. And I'm assuming that most of it will remain
24 redacted, but I'll take a closer look between now and then.

25 MR. KLEIN: Your Honor, this is Sheldon Klein. May I

1 be heard?

2 THE COURT: Sure.

3 MR. KLEIN: I was slow getting off of mute when you
4 first asked did anyone want to be heard. So I apologize.

5 First, in all honesty, I have not looked at the
6 redactions to assess the appropriateness. The only thing
7 that that -- and so I don't have any objection to any
8 particular redaction. I do want to remind that the seminole
9 Sixth Circuit case, the Blue Cross case was in the context of a
10 class certification motion.

11 THE COURT: Absolutely.

12 MR. KLEIN: And the class members didn't have a reason
13 basis to assess the settlement, object, et cetera, given the
14 extent of the sealing.

15 THE COURT: Correct.

16 MR. KLEIN: So I think everyone is appropriately
17 judicious in using the sealing.

18 THE COURT: Well, the fact is almost nothing is going
19 to be sealed. Because tomorrow -- by close of business today,
20 Ms. Weiner will file her motion to seal just those personally
21 protected Social Security numbers, driver's license, things
22 like that. So the things that are subject to -- that her
23 motion has can be sealed until I decide the motion, but
24 everything else is going to be unsealed this afternoon.

25 As far as I'm concerned, it was on there too long

1 already sealed, but I knew we had this conference coming up and
2 so it seemed more efficient to deal with it this way than to
3 deal with it before today.

4 MR. LEOPOLD: Thank you, Your Honor.

5 THE COURT: So we're going to be in compliance with
6 *Blue Cross versus Shane* immediately.

7 And then from here on out paragraph 10 supersedes
8 paragraph nine in how it should be done. So I think paragraph
9 nine needs to be -- that's -- somehow you need to warn people
10 I'm going to file this that you have designated confidential,
11 14 days before you file it, I guess.

12 Or else you file it with a motion to seal setting forth
13 this procedure and the public will know that in 14 days it will
14 be made public or adjudicated. So we can deal with it

15 MR. LEOPOLD: Your Honor, this is Mr. Leopold. Just
16 one thing. Because of the time of this hearing and these
17 issues arising now, can we have until tomorrow to file our
18 papers on this?

19 THE COURT: Sure.

20 MR. LEOPOLD: Thank you.

21 THE COURT: No problem.

22 So the next issue -- or the first issue that was on
23 the agenda is the issue of how we're going to address the class
24 certification motion in light of the State of Michigan,
25 Governor Snyder and Treasurer Dillon's posture in the case.

1 And we had the development yesterday of the Sixth Circuit
2 unanimously denying the en banc consideration. And I think
3 counsel -- their counsel, was preparing for that eventuality in
4 their submission.

5 But I have just lost it on my screen. So give me a
6 minute.

7 And they submitted a very detailed proposal in the
8 event that that happened. But I have to get it back up in
9 front of me.

10 Oh, there it is. Okay.

11 So Mr. Kuhl -- or Ms. Bettenhausen?

12 MR. KUHL: Yes, Your Honor.

13 THE COURT: Yeah. I guess the one thing that your
14 submission implies is that you've made a decision not to seek
15 cert in the Supreme Court; is that fair?

16 MR. KUHL: I haven't discussed it with the solicitor
17 general's office yet because I was defending depositions all
18 day yesterday.

19 THE COURT: Okay.

20 MR. KUHL: So I still need to do that, frankly. All
21 of our witnesses have been deposed or the relevant ones have
22 been deposed we know what the testimony is. From my
23 perspective it may be better to just bring it down and go up on
24 the merits than to pursue it further.

25 THE COURT: Okay.

1 MR. KUHL: But I have to get final decision from those
2 that are much smarter than I am.

3 THE COURT: I understand. I've been in that position.

4 MR. KUHL: Including Ms. Bettenhausen.

5 THE COURT: There you go. So when will that decision
6 be made?

7 MR. KUHL: I expect it will be made very quickly. I
8 would certainly expect it by the end of the week.

9 And I'll let everybody know. We're certainly not
10 going to hide what our decision is on that.

11 THE COURT: Okay. And I would ask you to inform me
12 through an E-mail to counsel and Ms. DeHart.

13 MR. KUHL: Okay.

14 THE COURT: Because what I want to do is set up a
15 schedule assuming that your proposals set forth on page four,
16 which says, "If the petition for reconsideration en banc is
17 denied, the State defendants request the following scheduling
18 order."

19 Let me -- I have not had enough appellate work
20 that -- my appellate experience is pretty spotty.

21 How long do you anticipate -- let's assume you don't
22 seek cert. How long do you anticipate before the mandate
23 issues?

24 MR. KUHL: Mandates typically issue pretty quickly.

25 THE COURT: I've never been in -- it's a mystery to

1 me. Because I find that in some cases and then in others it's
2 months.

3 MR. KUHL: I haven't had the --

4 MS. BETTENHAUSEN: Your Honor? This is Margaret
5 Bettenhausen. I believe it should issue in seven days and if
6 not it's kind of unusual.

7 THE COURT: Okay.

8 MS. BETTENHAUSEN: It should happen very quickly, but
9 they rarely let us tell them what to do in the Sixth Circuit.

10 THE COURT: I know.

11 MS. BETTENHAUSEN: That is what I understand their
12 goal to be.

13 THE COURT: Okay. They never ask me either.

14 Okay. So that won't be a holdup. That's good to
15 know. So, then, you're suggesting that you would file an
16 answer within 21 days for Governor Snyder and within that same
17 21 days, you would file your memorandum on former Treasurer
18 Dillon?

19 MR. KUHL: Correct.

20 THE COURT: Okay.

21 MR. KUHL: Unless class plaintiffs, now that they've
22 deposed Mr. Dillon, are agreeing that they're not going to
23 pursue their claims against him.

24 THE COURT: Let's find out.

25 Mr. Leopold?

1 MR. LEOPOLD: We intend to go forward at this point in
2 time, Your Honor, with Mr. Dillon.

3 THE COURT: Okay. All right. And when was he
4 deposed?

5 MR. KUHL: I believe it was last ...

6 THE COURT: Mr. Kuhl, you went out.

7 I can't hear you. Darn.

8 MR. BLAKE: Jordan or Katie, do you know when he was
9 deposed?

10 FEMALE SPEAKER: The 7th and 8th. I believe it was
11 July 7th and 8th.

12 THE COURT: Okay.

13 MR. KUHL: Sorry. A little screen freeze there.

14 THE COURT: That's okay. All right. So I think the
15 21 days is very reasonable in light of getting -- you need the
16 transcript. You need to figure out your position based on the
17 testimony.

18 Although this is a not a summary judgment.

19 Well, that's what we'll do. We'll do the 21 days and
20 then there will be 14 days for class plaintiffs to respond.
21 Unless you want to shrink it right here. You have an
22 opportunity to shrink the time line and do it in seven days, if
23 you want.

24 MR. LEOPOLD: You're talking about for Mr. Dillon?

25 THE COURT: Yes.

1 MR. LEOPOLD: We'll do it in seven days, Your Honor.

2 THE COURT: Okay. And then Mr. Kuhl, explain number
3 four to me.

4 "Within 14 days of the state defendant's filing and
5 answer, putative class plaintiffs will provide the state
6 defendants with a list of any additional depositions that must
7 be taken before former Governor Snyder's defense of qualified
8 immunity."

9 Do you mean in a summary judgment? What do you mean
10 there?

11 MR. KUHL: Right. I mean, well, the case law is
12 already established that we have to prioritize discovery for
13 purposes of the qualified immunity defenses.

14 THE COURT: Correct.

15 MR. KUHL: And the vast majority of our witnesses have
16 already been deposed or are scheduled to be deposed here over
17 the next 30 days. So our thought process is we have these two
18 things going on. We have class certification. We have to
19 prioritize discovery. So I thought we had to address that in
20 this order. I thought it was an appropriate mechanism to do
21 it.

22 We need to know what, if any, additional depositions
23 do class plaintiffs think are necessary. If there's none,
24 that's great. Then we can proceed.

25 THE COURT: Okay. Okay.

1 MR. LEOPOLD: But they should be able to identify them
2 and get them done so we can then make decisions on how to
3 proceed.

4 THE COURT: Mr. Leopold?

5 MR. LEOPOLD: Your Honor, thank you. I'm not sure at
6 this point in time for purposes of our class certification
7 papers we need to have any additional depositions taken. I was
8 trying to understand.

9 THE COURT: This is regarding Governor Snyder's
10 defense of qualified immunity.

11 MR. LEOPOLD: I understand. I think we are
12 sufficient if we have 24-hours to be able to digest that and
13 see if there is anything else, but I'm not of the view at this
14 point in time that we do. I think we're comfortable in the
15 status that we are now. And I -- you know, in regards to
16 number four, I'm not sure what else we need to do in terms of
17 either the state wanting discovery. If they do, we can
18 expedite anything that they want so that we can all be on the
19 same schedule.

20 THE COURT: Okay. This is for you to identify, this
21 particular entry. It sounds like you've had this for 48 hours
22 or something. I know I have.

23 So I'm going to assume there's no one there and you'll
24 have to let me know if there is. So I'm not going to
25 include --

1 MR. LEOPOLD: We'll let you know no later than the end
2 of business tomorrow.

3 THE COURT: Okay. All right. And number five
4 probably doesn't need to be there. Because it said you would
5 do those depositions that so far you have not identified within
6 30 days. And then state defendants would have 90 days after
7 filing their answer.

8 Now, a great deal of written and deposition discovery
9 has already been done. There's a home inspection protocol for
10 the bellwether plaintiffs. So what are you -- Mr. Kuhl, what
11 are you anticipating for the home inspections now of each named
12 class plaintiff or what?

13 MR. KUHL: We haven't done any home inspections, Your
14 Honor?

15 THE COURT: I know you haven't.

16 MR. KUHL: We haven't been part of the process. So I
17 can't rely on somebody else's.

18 THE COURT: Stop. You don't know if you can or not
19 until you look at the protocol, which we've all seen. Do a
20 background check on who is doing it and then decide if that's a
21 reliable source. You don't want to just redo it for the sake
22 of spending taxpayer's money and redoing it.

23 MR. KUHL: Yeah. Maybe it's my misunderstanding. I
24 thought individual defendants were doing inspections.

25 THE COURT: They can. You certainly can. But if you

1 don't need to, I don't know why you would. If you --

2 MR. KUHL: Okay. Fair ...

3 THE COURT: If you get it from an expert.

4 MR. KUHL: Fair enough.

5 THE COURT: But if you rely --

6 MR. KUHL: But I find it hard to rely on an expert
7 from Veolia or VNA in light of the dispute between the parties.

8 MR. STERN: Your Honor, this is Corey Stern.

9 THE COURT: Somebody's -- for a minute there, somebody
10 was hammering.

11 MR. STERN: There are workers in my house. So it's
12 probably me. I apologize.

13 I just want to note that in terms of home inspections,
14 the bellwether cases as they pertain to Governor Snyder or any
15 of the state defendants are presently still up on appeal. And
16 while I think the decisions will follow form, you're talking
17 about home inspections of class representatives, I believe,
18 because I don't think the state is yet conceding that they're
19 in the bellwether cases. So I just wanted to make that clear.

20 THE COURT: Thank you. So the home inspections are
21 not the ones that Veolia is doing now; is that the case?

22 MR. STERN: Mr. Campbell, is that the correct answer?

23 MR. CAMPBELL: I'm sorry. That is the correct -- the
24 home inspections -- and I defer to Mr. Rogers on this.

25 But the home inspections that we have been pursuing to

1 date have been of the bellwether plaintiffs. Those have not
2 occurred as of yet. But we will be seeking to have inspections
3 of the homes related to the class representative. We haven't
4 started that process as of yet, but we'd be in a position to
5 follow the existing protocol. We just need to get arrangements
6 with the class lawyers and make that schedule, get it in place.

7 MR. LEOPOLD: Your Honor, this is Mr. Leopold. That
8 is fine. We have not been apprised they want to do that, but
9 we'll do it on an expedited basis and I would only ask that the
10 state, if they are going to do it, they work in tandem so we
11 don't have multiple inspections. They could all do it at the
12 same time.

13 THE COURT. Absolutely.

14 MR. KUHL: But, Your Honor, the point is we have not
15 participated in plaintiff discovery at all. I don't even know
16 if we have deposition transcripts for the class plaintiffs, let
17 alone discovery responses. None of that has been done. So we
18 need to get that. We need to review it. Move for it. We
19 haven't issued any discovery as to class plaintiffs'
20 allegations, which are important for commonality, typicality.
21 And as we know now from the depositions that have been taken,
22 many of which are false. So we need to have the opportunity
23 because they're going to go to some significant issues for
24 class certification.

25 THE COURT: Okay. So the 90 days just seems like a

1 long time, but I'm not sure there's a way around that.

2 MR. KUHL: Your Honor, let me ask you about --

3 MR. LEOPOLD: May I? This is Mr. Leopold. May I make
4 a suggestion?

5 THE COURT: Sure.

6 MR. LEOPOLD: If there is a reasonable time frame that
7 the state can provide us, for example, what transcripts they
8 want, we'd be happy to provide them. What discovery, written
9 discovery, they want within a short time frame, we will move
10 on an expedited basis and get that to them. Because I think
11 90 days is a long way off and we can do it since we want to be
12 as cooperative as possible so everybody stays on the same time
13 line for class certification briefing purposes to work with
14 them in whatever way we can.

15 MR. KUHL: I appreciate that, Mr. Leopold.

16 I guess one question I had for Your Honor -- and this
17 goes back quite a ways. My recollection is Your Honor was
18 going to wait to make a decision on class certification until
19 after the first bellwether. Is that accurate?

20 THE COURT: If I once said that, it's not been on my
21 mind lately.

22 MR. KUHL: Okay.

23 THE COURT: Because I don't see any benefit to it one
24 way or another. I want to keep both tracks going.

25 MR. KUHL: That's fine. In looking at our dates, that

1 had been a recollection I had -- and this goes back quite a
2 ways -- is that our timing kind of lined up with where
3 completion of the first bellwether trials. So that I thought
4 Your Honor had wanted the benefit of that. In fact, that could
5 be an error in my recollection.

6 THE COURT: I think that could even be a bit of a
7 problem. So I'm going to just keep the foot on the pedal on
8 both of them. So I'm going to change the 90 days to 70 days in
9 light of Mr. Leopold's offer to get expedited responses.

10 MR. LEOPOLD: Your Honor, is this item number six that
11 you're referring to?

12 THE COURT: Number six will go to 70 days.

13 So if we're at -- so we're at 91 days past an answer.

14 Now, here's the problem with number seven. Is that
15 the experts are going to be starting to get deposed and I think
16 you just have to participate in that as you go.

17 MR. KUHL: Your Honor, I would strongly push back on
18 that as being unfair. I got to admit, I haven't even read the
19 attachments to the motion for class certification at this
20 point. We don't have experts to assist us to prepare for those
21 depositions. There is no possibility that we're going to be
22 prepared to participate in those depositions in any significant
23 way on the current schedule. That would be unfair, Your Honor.

24 THE COURT: I hear you. Let me try to -- because I
25 don't want the experts deposed twice. I am all in favor of two

1 full days. I think that's very reasonable. I think the City
2 of Flint used the word "breathtaking stroke" for class
3 certification. And it is breathtaking in terms of some 14
4 experts and so on with all lengthy reports and deeply
5 meaningful report -- you know, substantive reports.

6 MR. KUHL: In my proposal -- you're right. I
7 understand we're going to have two days for the deposition. My
8 thought had been that we'll have one day for the engineering
9 defendants and then a second day down the road for the
10 governmental defendants.

11 THE COURT: Oh, I see.

12 MR. KUHL: And the time period. It's really just
13 giving us time to get up to speed.

14 THE COURT: You're suggesting two different times.

15 MR. LEOPOLD: Your Honor, may I just weigh in on this?
16 Because this is an important issue, of course, for everybody.

17 THE COURT: Yes.

18 MR. LEOPOLD: But from the plaintiff's perspective,
19 they are detailed, important depositions. They are very
20 substantive. If anybody, including the Court, has had an
21 opportunity to review them in some semblance, I think everyone
22 would be in agreement they are very substantive in nature,
23 which is our responsibility that we wanted to accomplish, which
24 we believe that we have.

25 That said, to do these on two separate days, you're

1 dealing with not only time, but a tremendous amount of cost to
2 take care of one expert and prep them at two different times
3 over long periods of time. That's not fair, number one.

4 Number two, with all due respect to the state, the
5 state has been in this case for five years and although that
6 they have been up on appeal, to just say that they put a
7 curtain up between them and what has been going on in the case
8 is not necessarily fair to all the other 18 attorneys and
9 parties that are involved in the case and they should have, in
10 some semblance, have experts talk to experts and be somewhat
11 prepared for what, inevitably, you know, over at least the last
12 month and a half, everybody sort of knew what was going to
13 happen with the en banc ruling.

14 So I think it's not fair to put all of this off and
15 have two separate tracks just for the state.

16 MR. KUHL: Whatever the deep pockets are that
17 plaintiff's counsel is talking about, the state does not have
18 those at this time. There are significant limitations in our
19 ability to do anything.

20 THE COURT: No, I understand that.

21 Here's what, Mr. Kuhl. I think this is a tough one
22 because, as Mr. Leopold said, you've been in this litigation
23 for six years. I understand you couldn't go hiring experts
24 before you knew how -- what was going to happen at the Court of
25 Appeals and you wouldn't have filed for en banc if you didn't

1 think there was a chance of getting it.

2 But I think that the depositions have to be back to
3 back on two consecutive days where possible. If there's an
4 expert who can't do that or doesn't wish to do that, that's
5 fine. But I do think that the degree of time that goes into
6 preparing to be deposed on the kind of detailed reports that
7 are provided, it would not be helpful to any of you to have to
8 prepare twice to even observe the deposition, consider followup
9 and so on.

10 MR. KUHL: In that case, Your Honor, we just ask that
11 the expert depositions move back so we'll have time to prepare.

12 THE COURT: I'm going to do that.

13 So right now -- what is the plan, Mr. Leopold, now for
14 when you would be starting to produce your experts?

15 MR. LEOPOLD: We've been asked by the engineering
16 defendants to proffer these experts for depositions beginning,
17 I believe, first or second week of August to run through
18 whenever we can complete them early enough in September so that
19 they would have time to prepare their briefing. We intended to
20 do that. We've been in touch with our experts and working on
21 dates.

22 We also need to be mindful -- which I know the Court
23 is when this issue came up before. A few of the experts are
24 dealing with the COVID issue and so their time is a little bit
25 limited due to the nature of the work that they're doing. So

1 we are working around those schedules as well.

2 MR. CAMPBELL: Your Honor, this is James Campbell. We
3 did ask Mr. Leopold and the other class lawyers for dates for
4 the experts, you know, pretty much as soon as we got that
5 motion. Just knowing that with 14 professionals and experts
6 like this and some that had indicated they were involved in the
7 coronavirus and COVID issues, that we wanted to just get
8 those -- the requests out there right away. But we also
9 have -- we don't have anything set as of yet.

10 So although the efforts to try to make that happen
11 started right away, we don't have dates and, you know, one of
12 the impediments was the issue that we'll address next, I think,
13 regarding the amount of time for the expert depositions.

14 MR. LEOPOLD: Well, we should also say the reason why
15 there's been a few days' delay is because of the last hearing
16 last week dealing -- before we knew the appellate court was
17 ruling, that we thought we were going to be changing the entire
18 schedule to a certain extent. But we are endeavoring as we
19 speak to get those dates.

20 THE COURT: Okay. Then what I think we need to do is,
21 sadly, I know you're endeavoring to get them now, but I think
22 we need to postpone them for a period of time for the state to
23 get up to speed. And so I think we need a sort of moratorium
24 or whatever, a stay, on that portion of the discovery for 60
25 days from today. Which will permit the state to read the brief

1 and the reports, more importantly, or as importantly, and
2 figure out who they're going to consult with to prepare for the
3 depositions.

4 They have a right to appeal. Qualified immunity is a
5 well-established principle and they made that argument. They
6 pursued it. It has thus far not been successful, but I can't
7 punish them for doing that. And so we'll put -- so we won't
8 begin experts for 65 days.

9 MR. LEOPOLD: So, Your Honor, just to be clear where
10 we're at, is 65 --

11 THE COURT: From today. Not from --

12 MR. LEOPOLD: 65 days from today. So the middle of
13 September, if you will, we should look to be getting dates now
14 to try and get them all on the books for the middle of
15 September moving forward for at least a couple of weeks?

16 THE COURT: Correct.

17 MR. LEOPOLD: Thank you.

18 MR. KLEIN: Your Honor, this is Sheldon Klein. Could
19 I chime in for a minute?

20 THE COURT: Yes.

21 MR. KLEIN: Two days -- 14 depositions in two days,
22 the notion we're going to get this done in a couple of weeks or
23 a month strikes me as highly infeasible.

24 THE COURT: I didn't have that idea.

25 MR. KLEIN: It's an unrealistic schedule.

1 THE COURT: Yeah. No. That's not what I was thinking
2 was going to happen. Also, you'll have to breathe and you have
3 to lead your lives. So back to back to back with these experts
4 is just not manageable.

5 So how much time, Mr. Klein, do you think should be
6 set aside to get them done?

7 MR. KLEIN: It's hard for me to see them getting done
8 in -- I mean, two months would be achievable. I just don't see
9 how it works in much -- I mean, that's 28 deposition days over
10 two months. That's not -- you know, that's not extravagant.

11 THE COURT: No.

12 MR. LEOPOLD: Your Honor, this is Mr. Leopold. Could
13 I just be heard on this, too? With all due respect --

14 THE COURT: Yeah. Mr. Stern asked to be heard.
15 What was that, Mr. Stern?

16 MR. STERN: I apologize. I think it's important if
17 we're going to see the forest through the trees or whatever,
18 there's going to come a point in the next 30 days when the
19 defendants are going to seek to depose the experts that are
20 being proffered in the bellwether cases as well in anticipation
21 of an early February trial. And so any considerations that are
22 being made for timing should probably include -- and this
23 isn't to try to and jump over the class, but the reality is the
24 same lawyers are going to be presenting experts and ...

25 THE COURT: You just went mute.

1 You're still muted. You'll have to go back.

2 MR. STERN: Can you hear me now?

3 THE COURT: Yeah. And I think you were saying that --

4 MR. STERN: Just any consideration on timing should
5 probably also include any experts that are going to be named by
6 both the individual plaintiffs and defendants for the
7 bellwether cases.

8 THE COURT: And how many experts do you anticipate
9 having between and you Mr. Scholnik?

10 MR. STERN: I believe we have 10.

11 THE COURT: Okay.

12 MR. LEOPOLD: Your Honor, this is Mr. Leopold. Can I
13 just address this particular issue? And I appreciate -- there
14 are a lot of lawyers that have tried a lot of cases and have
15 been practicing a long time in dealing with these types of
16 issues. I appreciate experts and the time that it takes, but
17 in all of these complex litigations, rarely have I seen courts
18 that do not require, where appropriate, especially with the
19 number of firms and lawyers in these firms, not to have to
20 double up and get these depositions done. To just say these
21 depositions are going to go on for three months is not fair.

22 THE COURT: I didn't say that.

23 MR. LEOPOLD: It's routine to have multiple
24 depositions. Two experts even on the same day with the amount
25 of lawyers involved in these firms to have to take depositions.

1 THE COURT: That's -- stop. Stop.

2 MR. LEOPOLD: Mr. Klein may not be able to be at
3 all the depositions.

4 THE COURT: Stop. You can stop talking.

5 That's not what I was suggesting. I'm just trying to
6 figure out a plan now that I'm reminded that we have ten more
7 experts to take during this same time period.

8 Mr. Stern and Mr. Scholnik, when will your experts be
9 identified?

10 MR. STERN: It's the first week of August, Your Honor.
11 I believe it's the August 7th is the date.

12 THE COURT: And when does the CMO anticipate the
13 depositions of them will begin?

14 MR. STERN: I'm not sure that the case management
15 order states it.

16 THE COURT: Yeah.

17 MR. STERN: But Mr. Campbell and Mr. Mason and
18 Mr. Rogers for the defendants would probably know better than
19 we do.

20 MALE SPEAKER: Your Honor, if I can just add something
21 on there. We intend to provide a few dates for each expert to
22 be available for deposition with the reports. So we're going
23 to try to help expedite this procedure. We generally try to do
24 that.

25 THE COURT: And what are we going to do about the fact

1 that Governor Snyder is -- correct me if I'm wrong. We're
2 still waiting for the mandate for Snyder in *Walters* and *Sirls*.
3 Is that right, Mr. Scholnik?

4 MR. SCHOLNIK: I believe so, yes.

5 MR. KUHL: Do we have an opinion yet in *Walters* and
6 *Sirls*? I don't think so.

7 THE COURT: We had argument. You had an argument.

8 MR. KUHL: Ms. Bettenhausen will know better than I
9 do.

10 MS. BETTENHAUSEN: This is Margaret Bettenhausen. No,
11 we haven't. The opinions haven't issued in *Walters* and *Sirls*
12 yet.

13 MR. BARBIERI: That's correct. Charles Barbieri says
14 the same.

15 MR. STERN: That's true. But as someone who passively
16 participated in the oral argument there, it was pretty clear
17 from the judges that they were going to follow form in terms of
18 their decision when it came to the *Carthan* decision. And, in
19 fact, even said so on the record. And so Walter -- the state
20 sought to stay the oral argument pending the outcome of the
21 *Carthan* case and was denied.

22 Then at oral argument, the justices indicated that
23 this was the same issues and it would come to the same
24 conclusion and I don't believe anybody had any argument to the
25 contrary.

1 So for anybody to believe at this point that there
2 won't be a mandate issued, I think, would be -- you know, I
3 don't want to use any bad adjectives. But I would bet
4 significant money that mattered to me that the Court is going
5 to follow form as indicated on the record by the Court.

6 THE COURT: Yeah. I was an even more passive
7 participant than you and Mr. Walker and I reached the same
8 conclusion listening to it.

9 Not withstanding that Ms. Bettenhausen and
10 Mr. Barbieri and many others have some things to offer there.
11 But in terms of the questions that were asked, I didn't hear
12 answers to those questions that would lead to a different
13 conclusion.

14 So I hope that the state is thinking ahead in that
15 regard as well. Because I know I said a moment ago you have a
16 right to appeal. It's not only a right. You may have a duty
17 to test these decisions and so on to your client. But you also
18 have to be realistically planning ahead, making contingencies
19 for "In the alternative, if we don't prevail, then we're going
20 to be ready."

21 So for now be aware that at the beginning of August
22 you're going to get notice of the plaintiff in *Walters* -- well,
23 in those cases.

24 MR. BARBIERI: Your Honor, Charles Barbieri. May I be
25 permitted just to speak briefly?

1 THE COURT: Sure.

2 MR. BARBIERI: We have not -- and I don't disagree
3 with Mr. Stern's belief that he thinks a mandate will issue and
4 it will be adverse to us. But we still have not answered any
5 complaint in that matter. We just answered the *Carthan*
6 complaint today. And, quite frankly, you have to take that
7 into account when we fold in.

8 You said originally in the amended case management
9 order that when we answered, we would be folded into the case.

10 THE COURT: Yes.

11 MR. BARBIERI: And it would be determined at that time
12 what discovery would be permitted. And, obviously, we have
13 qualified immunities, too -- Governor Snyder is not the only
14 one here -- and we have a right to be heard on those. So there
15 has to be some process allowed for that and it cannot be on a
16 slippery slope that we'll be in a trial with the bellwether
17 plaintiffs in January or February. We're just not in that
18 position given the posture of where we are.

19 THE COURT: Right. So what do you suggest,
20 Mr. Barbieri? So what is your proposal? I identified the
21 problem, but what I need is an answer.

22 MR. BARBIERI: Yeah. What I wanted to do -- and I
23 believe it will be filed with Your Honor this afternoon -- is
24 for our next status conference, we would be folded into the
25 case management order. You would provide some dates on what we

1 needed to do with any paper discovery. It maybe
2 self-implementing in some respects. And then if we wanted to
3 do any further discovery, we would be permitted. And then we
4 believe that we were entitled to seek summary judgment based on
5 the discovery that's been conducted.

6 And we may not be that far off the schedule that the
7 state just suggested to Your Honor today.

8 THE COURT: Okay.

9 MR. BARBIERI: But I want to see it and do it in a way
10 that's going to protect my clients adequately.

11 THE COURT: Okay.

12 MR. ROGERS: Your Honor, it's David Rogers. You had
13 asked -- in answer to your question on the expert discovery
14 schedule, the period of time during which the bellwether
15 experts are to be deposed under the existing CMO that was
16 modified by you recently August 27th through October 28th, a
17 60-day period.

18 THE COURT: Okay. Well, I think what we should do is
19 keep that for now because it's not really been -- people have
20 not -- you all have not submitted concrete proposals or counter
21 proposals. So I'll maintain that for now.

22 And I do appreciate the offer, Mr. Scholnik and Stern,
23 to make sure that when you issue those -- when your experts
24 issue those reports, that you include in any cover letter or
25 how you wish to do it the dates they'll be available. Because

1 I think that will streamline the process.

2 But let's go back ...

3 And Mr. Barbieri, when you submit your proposal, if
4 you could model it after what Ms. Bettenhausen and Mr. Kuhl
5 have done here.

6 MR. BARBIERI: I think it may already be in the
7 process of going out. But if you permit me, perhaps, by Friday
8 or Monday to supplement it. I wasn't that farsighted, Your
9 Honor, when I identified the issue.

10 THE COURT: Okay. I just find that the author of the
11 proposal -- the concrete proposal is an advantage. And if you
12 want an advantage, the more concrete you are with me, the more
13 helpful it is.

14 MR. BARBIERI: Would I be allowed on Monday to submit
15 that, Your Honor?

16 THE COURT: Yeah, that would be fine.

17 MR. LEOPOLD: Your Honor, this is Mr. Leopold. Could
18 we go back to the issue of depositions of class experts?

19 THE COURT: Yes. That's what I'm doing right now.

20 MR. LEOPOLD: One of the things that we try to do --
21 and I think it's normal to do in cases of this kind -- is when
22 we give the dates, we will give two different dates for the
23 same expert that they are available so that the defendants can
24 work amongst themselves and have a choice of two days instead
25 of just saying, "Here's one date." Because it's likely others

1 may have conflicts, whatever it may be. But, other than giving
2 those two dates, they need to pick one of those two dates. Or
3 else with so many counsel, somebody's going to have a conflict
4 and we're never going to get anything set.

5 So that's number one. And number two, we're going to
6 also want to do those depositions. We on the class side are
7 prepared to cover multiple depositions in a short period of
8 time even if it's two on a particular day. So we're going to
9 give dates, again, two for each expert, but we're going to give
10 dates that are going to be in a time sensitive manner.
11 Meaning, you know, over a 30-day period or so.

12 MR. CAMPBELL: Your Honor, this is James Campbell.

13 THE COURT: Uh-huh.

14 MR. CAMPBELL: I believe -- and I'd stand corrected
15 because I haven't read it before I make this comment.

16 But I believe the CMO for the bellwether requires that
17 when the bellwether experts are identified or disclosed that
18 three sets of dates be provided. And, again, I'd stand
19 corrected. So that was part of the CMO.

20 For whatever reason, that was not part of the class
21 parts of the CMO with the disclosure capability. With respect
22 to the time over which 28 days of expert depositions take
23 place, I would request, as Mr. Klein has already requested and
24 I think Your Honor was accepting of the notion, that those 14
25 experts in 28 days take place over, basically, a 60-day period

1 or a two-month period.

2 THE COURT: I think that's reasonable.

3 So at this point those depositions will not start for
4 65 days from today and then they'll need to be completed over a
5 two-month period. Let's say a 60-day period. And whenever
6 possible, I would recommend avoiding double depositions on the
7 same day, but I'll leave that to all of you to sort out.

8 And Mr. Campbell, are you telling me that you need
9 additional dates from counsel?

10 MR. CAMPBELL: No, Your Honor. I only offered that
11 just because it's part of the CMO as I recall it.

12 THE COURT: Okay.

13 MR. CAMPBELL: And it wasn't part of the -- for
14 whatever reason, the class aspect of, you know, the rules
15 of -- the case rules, the CMO rules for class although it was
16 in the bellwether section.

17 THE COURT: I get it. I get it.

18 Okay. It's a good practice.

19 MR. CAMPBELL: It makes it easier.

20 THE COURT: I think we're on paragraph eight of the
21 State's proposal. Which is still a good proposal as far as I'm
22 concerned. So that's triggered 30 days after the end of the
23 time period for deposing class plaintiffs' experts and
24 paragraph nine, unless putative class plaintiffs want less
25 time. If you do, let me know. Now would be a good time for a

1 reply in support of your motion for class certification would
2 be filed 30 days from when the opposition is filed.

3 MR. LEOPOLD: We could do it --

4 THE COURT: Did we set the date for the opposition,
5 Mr. Kuhl?

6 MR. KUHL: I'm sorry, Your Honor. Could you say it
7 again?

8 THE COURT: Did we set -- oh, right there. I'm sorry.
9 That's in number eight. It's Your opposition and expert
10 reports and disclosures. Got it. Of course.

11 So it sounds like 30 days is already pretty expedited,
12 but if you want less time ...

13 Because you may want to take their experts'
14 depositions.

15 MR. LEOPOLD: We do, Your Honor. We need the 30 days.

16 THE COURT: Okay. Then we've got the hearing.

17 And tell me if any -- okay. Here's where we're going
18 get to whether there's a request for an evidentiary hearing.

19 So now what we have to figure out is if there is any
20 reason to have a separate schedule for the private defendants.
21 And I think it's not going to work to have a separate
22 bifurcated process because it's all triggered by getting these
23 depositions done. So we're going to have one omnibus schedule
24 for everybody and it'll be this one.

25 The only thing I'm going to tell you now is that as

1 I'm working my way through the motion, there's one or two
2 issues that become red flags, so to speak, of concern for me
3 and I may want to break those issues off, for example. And
4 this is not necessarily going to happen, but something I've
5 been percolating is whether there can be a class -- a damages
6 class of minors in a case -- in this case.

7 And so if, as I read that more carefully, do the
8 research and determine that I have significant concern about
9 it, I'm going to let you know. And if there are other
10 issues -- because I may want just early briefing on that. So
11 that if I think it can't be done, I'm going to let you know so
12 that no one's doing discovery and so on regarding a subclass of
13 minors.

14 So don't, you know, count on it, but it's something
15 that I'm thinking about. And the sooner I can get to it, the
16 happier I'll be. Because I don't want unnecessary work to be
17 done on that if I can figure out an answer sooner rather than
18 later. But of course, I'd let everybody brief it.

19 MR. LEOPOLD: This is Mr. Leopold, Your Honor. We
20 certainly would vigorously want to be able to brief that issue
21 to the Court.

22 THE COURT: Well, I had --

23 MR. LEOPOLD: If I can go back, Your Honor, to one
24 issue about -- I think it's number nine, paragraph number nine.

25 THE COURT: Okay.

1 MR. LEOPOLD: I think class for its reply is going to
2 need more than 30 days. If the state has experts, which I'm
3 assuming they're going to have several, I would think, in order
4 for us to get expert dates, take their depositions, get the
5 transcripts and then also incorporate that briefing into the
6 reply, it's quite burdensome for us. Especially in light of
7 the fact that the defendants --

8 THE COURT: Of course. Just make your proposal.

9 MR. LEOPOLD: I'm sorry?

10 THE COURT: I understand that. I get it totally.

11 MR. LEOPOLD: But we need additional time, Your Honor,
12 than the 30 days.

13 THE COURT: Right. But tell me how much time. You
14 know better than I do.

15 MR. LEOPOLD: Sixty days, Your Honor. We'd like 60
16 days for that.

17 THE COURT: Okay.

18 MR. LEOPOLD: Thank you.

19 THE COURT: That's okay with me.

20 All right. Great. Okay. Well, then, do we have that
21 sufficiently addressed?

22 MR. LEOPOLD: Your Honor, I need to go back to one
23 other paragraph because I'm not sure I'm clear on what the
24 Court said. On paragraph seven the Court reduced it from 90
25 days to 70 days in terms of the additional discovery or any

1 discovery the state would like to do. Do you recall that?

2 THE COURT: Correct. Yes.

3 MR. LEOPOLD: Okay. So I believe Your Honor said 70
4 days from the time of the answer. But wouldn't it be 70 days
5 from today so that they have to work to get us whatever
6 discovery they want? If not, then it's really 90 days from
7 today.

8 THE COURT: It's 91 days from today. Because it was
9 21 days -- well, not from today. From the mandate. It's 21
10 day from the mandate plus 70 days.

11 MR. LEOPOLD: Right. But is there a reason why we
12 can't start the clock now in terms of them providing us
13 discovery that they want so that we can move the ball a little
14 quicker?

15 THE COURT: I don't have the mandate and I don't have
16 jurisdiction to require that. This is all dependent on the
17 mandate issuing. So I've got to get that.

18 MR. LEOPOLD: But everything we're doing is without
19 the mandate right now.

20 THE COURT: I know.

21 MR. LEOPOLD: So why would it matter?

22 THE COURT: Because it's triggered by the mandate. So
23 if we don't get the mandate, we're going to get back together
24 by the 29th and fix this schedule up in a different manner.

25 If it turns out that the solicitor general authorizes

1 and the client requests or however it works, a cert petition,
2 then I think we're going to have to get a motion -- I don't
3 know exactly what happens then, but it's all got to be
4 triggered from the mandate.

5 Does that satisfy you?

6 MR. LEOPOLD: So all of these dates are stayed until
7 we get the mandate and then they jump from the mandate date?

8 THE COURT: Yes.

9 MR. LEOPOLD: So the 30 days for the answer is not 30
10 days from today. It's whenever the mandate issues?

11 THE COURT: I think it was 21.

12 MR. KUHL: 21.

13 THE COURT: 21 days. Yeah.

14 MR. LEOPOLD: So if we're three or four weeks from now
15 and we don't have a mandate, we're looking at an answer not
16 until September.

17 THE COURT: Well, but we're going to be back together
18 in two weeks. And we're going to come up with some way to
19 address that. That's why I was asking you. Ms. Bettenhausen
20 answered and she said she thinks it should be within seven
21 days, within about a week from today. Or from Thursday.

22 And that's why I was expressing frustration that I've
23 had other cases where it just seemed to be a month or so or
24 more. So that's -- but, you know, all of you have a lot of
25 letter writing capacity and maybe there will be a letter sent

1 to the Court of Appeal's clerk asking when it will be issued.
2 Because we're waiting for it.

3 MR. LEOPOLD: I realize the Court has no, I guess,
4 really no jurisdiction to force anybody -- to state, I guess,
5 these individuals to do anything. But knowing that we are just
6 waiting for the mandate. I guess can we not get the state to
7 send us what they want by way of discovery instead of waiting
8 for those time periods to start?

9 THE COURT: I would love that.

10 MR. KUHL: We'll certainly get it out as quick as we
11 can by the time we file or even before. We're not going to
12 issue it before our mandate and it's got to be drafted. At the
13 same time we're defending depositions every day. Every day.

14 MR. LEOPOLD: Well, it could be an informal request is
15 what I'm saying.

16 MR. KUHL: Still, somebody has to go through and put
17 them together, Ted. When right now we have a completely full
18 plate. And every one of my team members is on a furlough every
19 day, every week.

20 MR. LEOPOLD: Okay.

21 THE COURT: Okay. I don't have authority to do
22 anything other than what I'm doing.

23 MR. LEOPOLD: I appreciate that, Your Honor.

24 THE COURT: Here's the situation, Mr. Leopold, if you
25 have a concrete proposal that provided another way to go

1 forward, bring it on. And I will absolutely consider it.

2 MR. LEOPOLD: I would love to be able to do that, but
3 if it's the Court's position -- and, I guess, legally, the
4 Court is certainly correct, I guess. There's no jurisdiction
5 against the state. Although there are all the other parties
6 that the Court does have jurisdiction over. And I don't see
7 why -- with all due respect the plaintiff class is very
8 prejudice because the defendants are going to have the
9 briefing, the reports for months and months and months to file
10 in opposition brief, et cetera. And it's, you know --
11 respectfully, it's unfair.

12 THE COURT: Well, it's not fair or unfair. It's what
13 the law requires. It's just neutral. I know it has an impact
14 of delay, but it --

15 MR. LEOPOLD: No, Your Honor.

16 THE COURT: I don't have a way around it.

17 MR. LEOPOLD: It is unfair -- whether the law allows
18 it or not, it doesn't mean it's not unfair. It is unfair when
19 a party has months and months to respond to extensive briefing
20 and we don't have that opportunity. All the other defendants
21 are in the case right now. There's no reason -- and,
22 especially, the state is in the case on the injunction issue.

23 THE COURT: Well, if you want to --

24 MR. LEOPOLD: We can move forward as to the time we
25 had.

1 THE COURT: If you want to produce your experts twice,
2 we can do it that way.

3 MR. LEOPOLD: We might want to do that. If we keep
4 the schedule as is, we might want to do that.

5 THE COURT: Okay. But as of now, this is what we've
6 worked out on --

7 MR. LEOPOLD: Your Honor, if I'm on the record right
8 now --

9 THE COURT: Just stop. Stop. Stop, Mr. Leopold. I'm
10 going to mute you right now if you don't.

11 MR. LEOPOLD: Can I just say?

12 THE COURT: No, you can't.

13 MR. LEOPOLD: Our position is we'll produce our
14 experts twice if we can schedule them now --

15 THE COURT: Mr. Leopold, if I can figure out how to
16 mute you at this point I would have to do that.

17 (Mr. Leopold placed on mute.)

18 THE COURT: So here's the situation about fair and
19 unfair. That implies that someone is intentionally doing
20 something and at this point, the intentionality is missing.

21 And so I'm sorry that we had to mute you on that, but
22 we can't have two people talking because you won't be on the
23 record when that happens.

24 So we're going to move on. And no one wants this case
25 to move forward faster than I do and all of you. And so

1 everyone has their own motivations here for needing this to
2 come to a conclusion. Some may wish to drag on, I don't know.
3 But I don't wish to have that happen on my watch and I'm doing
4 what I can to keep it going forward.

5 Here's on the *Bacon* versus Newman -- I mean, versus
6 LAN. Here's what I think I'm going to do. This -- what I'm
7 trying to avoid here is having various sort of individual cases
8 require a sort of more time than sort of the bellwether
9 process, the class process, the sort of test cases with *Brown*
10 and *Marble* to test those pleadings.

11 And the *Bacon* case is sort of rising to the top of the
12 small number of cases that are sort of posing that challenge
13 for me. And so what I'm going to do is consider the pending
14 motions to dismiss on the existing now filed amended complaint.
15 Not the newly proposed amended complaint, but the one that's
16 there. And I have a response and I'll permit a reply.

17 So anyone who -- I think I have MDEQ and I have City
18 of Flint motions to dismiss. I'm not sure how many other
19 motions to dismiss in *Bacon*, but I do have a response from
20 plaintiff's estate. And so does anyone who has filed a motion
21 to dismiss wish to file a reply to the response?

22 MR. KIM: Your Honor, William Kim for the City. Yes.
23 We were planning on filing a response to the *Bacon* -- or reply
24 to the *Bacon*'s response to our motion.

25 THE COURT: Okay.

1 MS. JACKSON: Your Honor, this is Krista Jackson on
2 behalf of the MDEQ defendants, employee defendants. We also
3 plan to file a reply brief in *Bacon*.

4 THE COURT: Okay. Good.

5 Well, that will all just follow the local rules. And
6 then, I'm not anticipating an oral argument in that, but anyone
7 who wishes to have an oral argument, if so, you can let me
8 know.

9 Okay. Let's go to the deposition issue where VNA has
10 listed nine additional potential witnesses to be deposed. So
11 Mr. Campbell, you have -- let me go to that submission. Here
12 it is. You want to depose Alicia Bibbs (ph).

13 MR. CAMPBELL: Your Honor, Dave Rogers is going
14 address this issue.

15 THE COURT: Okay. Let me tell you. The response that
16 I got from, I think, Mr. Stern, indicates that it's the
17 teachers that he objects to at this point. Let me make sure I
18 understand Mr. Stern's response. Let's go through these one by
19 one.

20 Mr. Stern, do you have an objection to Ampy's mother,
21 Alicia Bibbs being deposed?

22 MR. STERN: Yes.

23 THE COURT: And what is the basis of that objection?

24 MR. STERN: They've already deposed one of the parents
25 and it seems too much to depose another parent. It's -- you

1 know, we're on a pretty short time frame. If they're a parent
2 of a party, I see no reason why they can't serve some
3 additional Interrogatories or admissions -- request to admit to
4 sort of, you know, preserve some of the time associated with
5 the six-hour home inspections and the depositions that are
6 still scheduled, the fact witnesses and then the expert
7 depositions and then responses to summary judgment.

8 There's just so many hours in the day and each one of
9 the parents has been deposed for two days to the extent they
10 had questions for those parents. So we've prepared for and
11 reserved two days of time for the parents that were deposed to
12 now depose the other parent or grandparent to ask the same
13 questions. I've agreed and offered to provide responses to
14 written discovery to the extent there's additional information
15 that's needed on family members, especially because they've
16 already deposed a parent and/or, you know, legal guardian. I
17 just don't see the need for a second parent.

18 THE COURT: Okay. So Mr. Rogers, why do you need the
19 mother of Ampy, A-m-p-y? That mother apparently went to the
20 parent/teacher conferences and helped with homework. But the
21 mother isn't an expert in cognitive disorders related to lead.
22 So the mother's going to say I worked on spelling words and it
23 took Ampy a long time to spell.

24 I mean, how is that going to help you in a way that
25 the testing and all the other can't accomplish?

1 MR. ROGERS: By way of background. I think this would
2 help the Court in resolving this and going forward. We were
3 very careful in reviewing all of the plaintiff's
4 representatives' depositions very carefully and all the written
5 discovery and narrowing down to the utmost extent the number of
6 additional fact witness depositions that we were seeking to the
7 point where we're now with the nine.

8 THE COURT: Okay.

9 MR. ROGERS: With respect to each one of these, as you
10 will see in our submission, either the grandparent, the other
11 parent or the teachers that we've identified, had some role
12 distinct and separate from the parent who was the
13 representative of the minor plaintiff who testified in the
14 case.

15 So they have distinct and separate roles and
16 information that no one disputes is relevant to the damages
17 and, perhaps, liability issues in the case. And with respect
18 to Ampy, as you can see, Mr. Ampy, who was the representative
19 who testified at deposition, said that the mom was the one who
20 was involved in the parent/teacher conferences and who knew all
21 about the plaintiff's treatment from various medical care
22 providers that the father did not know about. So for each one
23 of these individuals, they absolutely possessed discoverable
24 information. We were very narrowly focused.

25 THE COURT: Then why can't -- Mr. Rogers, why can't

1 you do what Mr. Stern just suggested of submitting written
2 Interrogatories regarding the mother's responses?

3 MR. ROGERS: Well, first, they're not a party.
4 The person we're seeking to depose is not a party so the
5 Interrogatory rule wouldn't apply. But in terms of -- it's
6 just not the same. I mean, we could probably do these
7 depositions in -- they wouldn't take two days. They would
8 probably take half a day, at least, from our point of view.
9 And to ask for nine additional fact witness depositions who
10 have very important evidence that is relevant, there's no
11 contest or dispute that it's relevant, and to have a half a day
12 of depositions for each one of these nine folks with respect to
13 the 14 bellwethers is not unduly burdensome, we believe. And
14 the deposition practice is much preferred over Interrogatories.

15 And with respect to some of them, you know, they're
16 not relatives. They're teachers and medical care providers and
17 the like and they wouldn't be required to answer those type of
18 discovery requests anyway.

19 THE COURT: Right.

20 MR. STERN: Your Honor, if I just may respond? The
21 reason I didn't address the parents or the grandparents in my
22 letter to the Court was because I thought that I had an
23 agreement with Mr. Ken Halligan that Interrogatories and
24 written discovery were sufficient and that the only thing we
25 were arguing over or disagreeing over were the teachers.

1 To the extent that these are nonparties to the suit,
2 they are the individuals who hired my firm to represent the
3 interest of the children and I've agreed to assist them,
4 provide written discovery in conjunction with it on behalf of
5 those individuals.

6 There has not been a single deposition in this case
7 that has taken half a day. The VNA defendants are not the only
8 defendants in the case. If my clients are put up for
9 bellwether -- you know, for another round of depositions or
10 their parents, then in all likelihood by then a mandate may
11 have come from the state. All of the folks who were there
12 participating in the bellwether depositions previously will
13 likely be there to participate again. And there's no way these
14 depositions are going to take half a day. They're just not.
15 That's never happened yet.

16 THE COURT: Okay. Mr. Rogers, I understand why you
17 want a deposition instead of written Interrogatories. I see
18 each of the explanations. And if we had a single case of
19 Ampy versus VNA, I'd allow this deposition and probably
20 another -- another one regarding Ampy. But we're trying to
21 balance and have this be proportional, observe the
22 proportionality guiding principle in discovery.

23 So what I will permit you to do is submit written
24 Interrogatories, Mr. Stern, offering to get sworn answers to
25 those questions or to provide the answers to you. If at that

1 point you can show me that there is something critical that is
2 going to be learned, then, you know, there may be one or two
3 depositions that could be done by way of followup in the days
4 leading up to the trial, if needed.

5 MR. ROGERS: Understood, Your Honor. I guess we still
6 have to address the teachers.

7 THE COURT: That goes for the teachers, too. I mean,
8 you can subpoena the school records.

9 MR. ROGERS: We have. We have, Your Honor.

10 THE COURT: If you have the IEP, you have everything
11 that teacher's going to tell you.

12 MR. ROGERS: Well, I respectfully disagree, Your
13 Honor. You know, the fact that we have the education records
14 is what led us to notice the depositions of those teachers.
15 Because there's more information and it's information in there
16 that they can provide to us in the deposition that goes beyond
17 the education records.

18 So, again, we were very selective in what we requested
19 and tried to keep it very narrow.

20 THE COURT: I see that.

21 Tell me about Ann Wagar, W-a-g-a-r, who is Davis'
22 special education teacher. You have his high school
23 performance and you have his IEP. What is she going to tell
24 you? What do you want to ask her.

25 MR. ROGERS: The details of those IEPs and how they

1 relate to the actual performance in the classroom. IEP is, as
2 you know, individualized education programs. We want to know
3 how they were implemented; whether the student, in fact, met
4 the goals in the IEP and how it changed from year to year. So
5 the IEPs are sort of -- there are hopes as to how kids will do
6 in school, but we want to know how the IEPs were implemented
7 and what impact they had to find out with respect to that
8 individual plaintiff the extent to which that student was able
9 to overcome any difficulties that they had in academic
10 performance.

11 And, again, this wouldn't take two days of
12 depositions. We could do that deposition in half a day. You
13 know, the other defendants, I'm sure, would benefit from it as
14 well.

15 THE COURT: Okay. Let me tell you. I do want to
16 permit the deposition of Kathy Eaton, R-y-d-e-r's grandmother,
17 because, apparently, she's going to be able to tell you the
18 extent of the exposure to unfiltered Flint water from when that
19 ended and use of bottle or filtered water began for that
20 particular child.

21 So I know I interrupted you, but ...

22 And Mr. Stern, how are you going to get the
23 information that George Lee might have in September 2017
24 regarding the condition of a Flint home purchased in 2014?
25 Will you be able to get answers to questions. Because it's a

1 real concrete thing that an Interrogatory ought to be able to
2 answer.

3 MR. STERN: Any Interrogatory or request to admit or
4 request for production of documents that the defendants want to
5 have produced to them, we are in contact with the families. We
6 are the ones who produce the parents that gave this information
7 in the first place and I have zero doubt that we can get them
8 all of the information they want. On any one of the parents or
9 relatives of our clients.

10 THE COURT: Okay.

11 MR. STERN: I don't represent the teachers. I don't
12 represent physicians. My objection to those depositions are
13 just the timing and threat of what is occurring right now. I
14 mean, those are not summary judgment issues. Those are not --
15 you know, it's common practice in my business -- in our
16 business to prior to trial, but potentially post-summary
17 judgment, to be taking a few depositions here and there in
18 advance of trial.

19 THE COURT: Of course.

20 MR. STERN: And, you know, why are we going to take
21 five damages depositions to see how someone met at five or
22 seven or nine-years-old in an IEP in advance of what I am
23 certain VNA is going to say they have no liability because this
24 person wasn't even potentially exposed in their home, hence the
25 six-hour home inspection that they want to do prior to March

1 2015 when VNA left Flint forever.

2 So I think it's putting the cart way ahead of the
3 horse. I think these issues are, potentially, issues for later
4 when it comes to teachers and doctors. But to the extent it's
5 family members I will bend over backwards to get them the
6 information they need sworn under oath. And the minute I have
7 a problem with it, I'll let them know.

8 THE COURT: Okay. Then I'll permit the Kathy Eaton
9 deposition and order the responses to Interrogatories or
10 request to admit for the other witnesses.

11 MR. ROGERS: Thank you, Your Honor.

12 And then, Mr. Rogers, you have every right come back
13 and let me know that that was inadequate in terms of what you
14 were actually seeking to find out?

15 MR. ROGERS: Understood, Your Honor.

16 MR. LANCIOTTI: Your Honor?

17 THE COURT: Yes.

18 MR. LANCIOTTI: This is Patrick Lanciotti. Can I be
19 heard on this?

20 THE COURT: Sure.

21 MR. LANCIOTTI: Our office represents Kathy Eaton's
22 grandchild and it sounds like VNA is looking for facts and
23 information related to the child's consumption of water.
24 Couldn't that be answered in an Interrogatory as well? Why do
25 we need a deposition?

1 THE COURT: Well, that's a good deposition. Why do
2 you need that in a deposition? If Kathy Eaton is able to say
3 young Ryder -- I guess Ryder is his first name -- drank, you
4 know, water from X until Y, why do you need it in a deposition?

5 MR. ROGERS: Given Your Honor's comments, I don't see
6 it as materially different provided that Mr. Lanciotti has the
7 same, you know, requirements that are imposed on Mr. Stern to
8 answer fully, completely and provide the information and that
9 we have the right to seek more if we feel it's incomplete. I
10 don't see a difference between the two, Your Honor.

11 THE COURT: Okay. Then we'll do it that way.

12 Thank you, Mr. Lanciotti.

13 And thank you Mr. Rogers with your cooperation with
14 that.

15 MR. LANCIOTTI: Thank you, Your Honor.

16 THE COURT: Let's go back to the depositions. I hate
17 to do this. Because I realize that there was some question
18 about whether I'm going to order the expert depositions and
19 motion for class certification to be set for two days. And my
20 thought was that what I would do is give co-liaison counsel one
21 hour of that time. I think that Mr. Shkolnik pointed out in
22 his submission and Mr. Stern as well that there are issues --
23 for example, if those experts disagree with what their experts
24 say, they could end up getting called by defense counsel at
25 bellwether trials and so on. So I think one hour is fair.

1 And then my thought was that the remainder of the time
2 would be divided among defendants as set forth in the CMO. And
3 you can decide what order that is, but I don't see a reason for
4 any different division of the time.

5 MR. LEOPOLD: Thank you, Your Honor. For the record,
6 can the plaintiffs class counsel be heard on the issue?

7 THE COURT: Sure.

8 MR. LEOPOLD: Just a short position on the record.

9 THE COURT: Yeah.

10 MR. LEOPOLD: Is the Court's view that if the class
11 counsel -- or class putative class experts were to say
12 something in some fashion negative towards the bellwether
13 trials, the Court would allow cumulative experts in the defense
14 side to address those issues?

15 THE COURT: Just a minute.

16 Just one second. I got a note from Ms. Greenspan that
17 she got knocked off so I'm trying to get her back on.

18 Could you say that again, Mr. Leopold.

19 MR. LEOPOLD: Would you like me to wait, Your Honor?

20 THE COURT: No. I think she's back so go ahead.

21 MR. LEOPOLD: Just for the record, I'm trying to
22 understand, essentially, what the Court is saying. If there is
23 multiple experts on the class side, the defendants, per se, may
24 use those experts in the class case in the bellwether case even
25 though they already have experts of their own. So one would

1 think that those would be cumulative experts. I'm not sure the
2 Court would allow that. I'm trying to understand.

3 THE COURT: What I'm saying is that the plaintiff's --
4 individual plaintiffs' experts and class plaintiffs' experts
5 may diverge on some thresholds, for example.

6 MR. LEOPOLD: Right.

7 THE COURT: So your expert may say 14 days of exposure
8 to bathing and consuming food cooked with unfiltered water
9 during this time period. Their expert might say 90 days. And
10 then -- I mean, or might say two days. So I'm just saying
11 there could be overlap that's critical to prosecution of the
12 case by the plaintiffs to understand that defendants could end
13 up using, well, isn't it true the other Flint water individuals
14 have expert testimony that disagrees with your expert and says
15 it has to be longer period of time or a shorter or something.

16 So it's for those reasons that it seems that if they
17 need up to an hour to talk to these experts, get some questions
18 answered, that that would be available to them.

19 MR. LEOPOLD: I understand and I appreciate Your
20 Honor's comments. But there's two separate total different
21 litigations that are transpiring here. And if, hypothetically,
22 counsel for liaison were to ask questions, they would
23 essentially and in a totally separate unrelated case to the
24 class case be impeaching or attacking the class expert. Just
25 like we couldn't come into their expert depositions and

1 cross-examine their experts. Just they're totally separate
2 litigations. Why would the Court want to that happen?

3 THE COURT: If you request it, I would grant it, first
4 of all. But this is one massive piece of complex litigation
5 and for that reason, I think it's the most efficient way to
6 handle it. And it shouldn't -- I don't think it's going to be
7 a distraction. It's one hour out of a two-day deposition. It
8 could potentially resolve discrepancies or enlighten everyone
9 about discrepancies between one group of plaintiffs' experts
10 and the other groups.

11 So I know you disagree.

12 MR. LEOPOLD: No. I respect that. I respect the
13 Court's ruling. It's not an issue of it being -- upsetting
14 time or people's time. It's an issue of what is evidentiary,
15 admissible and from an expert's standpoint. And I just don't
16 see how any of that would ever come into a trial, but I
17 appreciate and respect the Court's view.

18 THE COURT: Okay. Thank you. So now we're ...

19 MR. SCHOLNIK: Your Honor, this is Hunter Scholnik.
20 If I can be heard on just one issue here regarding the length
21 of time for experts because I think it applies to defendants
22 and plaintiffs as well.

23 Unless I'm misunderstanding the case management order,
24 the two days for the most part allowed plaintiff the day, the
25 defendants the day and they split up for the most part. So if

1 there's only one hour for liaison counsel, if we even want to
2 use it, it seems like --

3 THE COURT: Yeah.

4 MR. SCHOLNIK: It seems like an awful lot of extra
5 time being given to the defendants to question these experts.
6 Whether they're our experts, their experts, class experts, it
7 just seems like that --

8 THE COURT: But that was already -- we've already
9 addressed that issue in that -- and now you're helping
10 Mr. Leopold, which I really appreciate.

11 MR. SCHOLNIK: We agree on something sometimes.

12 THE COURT: Yeah. This is good. This is progress.

13 But I think it was Mr. Klein or whoever wrote the City
14 of Flint's submission that mentioned that the testimony from
15 the experts was breathtakingly large in scope. And it's for
16 that reason that there will be extra time permitted for defense
17 counsel to sort this out.

18 MR. SCHOLNIK: Thank you.

19 THE COURT: Yeah. So now we're up to the home
20 inspections.

21 MR. ROGERS: Your Honor? I'm sorry.

22 THE COURT: Yes. Go ahead, Mr. Rogers. This is
23 yours.

24 MR. ROGERS: Yes. I'm sounding like a broken record
25 on this issue, but it's for good reason. I'll be brief. You

1 may recall the last time we were together both co-liaison,
2 bellwether counsel, stated that they would provide dates for
3 inspections to begin starting on July 6th. We still have zero
4 dates on the calendar. Mr. Klein and I -- Mr. Klein for the
5 City of Flint.

6 We've been trying our best to get dates on the
7 calendar. There are logistics involved. Our folks need about
8 a week's notice to be prepared. Mr. Stern in his letter
9 yesterday said that he's prepared to by July 20th start
10 providing dates by July 27th. If, in fact, that happens, we
11 should be able to get them done, given that the Court extended
12 the deadlines by 30 days. But I'm going to ask that the Court
13 order both co-liaison bellwether plaintiff's counsel to, in
14 fact, do that and to provide dates to us before the end of
15 August, starting on July 27th. Because, you know, they've said
16 they will do it, but they just haven't yet.

17 THE COURT: Yeah.

18 MR. ROGERS: If they don't, we will need to come back
19 to the Court and request some alternative relief which, you
20 know, would have to be determined based on how many of these
21 house inspections we actually get done.

22 So we are absolutely out of time if we want to stick
23 to the schedule that Your Honor has imposed on us to get these
24 done. So I'm requesting that the Court order the plaintiffs
25 to do what they said they would do. Both Mr. Lanciotti and

1 Mr. Stern, co-liaison counsel for all of the Bellwether
2 plaintiffs.

3 THE COURT: Mr. Stern?

4 MR. STERN: So I felt as though the Court had already
5 ordered us to do what we said we would do the last time. And
6 it's not that I said -- I don't believe we said the home
7 inspections would start July 6th. I believe we said that we
8 would get them dates by July 6th. The week before July 6th, we
9 were told that there were new constraints that were put on
10 their experts that required a week's notice in advance of any
11 inspections.

12 And in between that time, every bit of the schedule
13 got extended for 30 days. So whether the Court orders it or
14 not and I am fine agreeing to an order and stipulating to it, I
15 am no more moved by my own words when I say I'll do something
16 than I am then when I'm instructed to do it.

17 And I have every intention of providing dates, as I
18 stated in my letter for Mr. Rogers. So, semantically, what I
19 said in the then -- yeah.

20 THE COURT: Then what'll do is -- I pretty much
21 consider what I'm saying in all of these hearings to be an
22 order. Because what I do is with the order following this
23 conference, I consider all of that to have been ordered.

24 So, Mr. Rogers, your request is granted to that extent
25 and it's not opposed.

1 So, Mr. Stern, you'll get those -- I don't know if I
2 have your letter right in front of me. But you said something
3 like the 20th with a week's notice.

4 MR. STERN: I will have dates on the 20th to Mr.
5 Rogers for the week of 27th. Because according to Mr. Rogers
6 they need one week's notice.

7 THE COURT: Right.

8 MR. STERN: For their experts. So that will be done.
9 And if Mr. Rogers could state how many inspections per week are
10 you seeking on behalf of you and Mr. Klein?

11 MR. ROGERS: Yeah. Corey, the one week's notice is
12 the minimum required. Is there any reason that you couldn't
13 provide dates for all 10 of the bellwethers that you represent
14 who either presently still live in the same house or live in
15 houses owned by relatives of theirs? Why can't you give us the
16 dates for those 10 on July 20th for all of them and that will
17 greatly assist in the scheduling and the logistics involved
18 between Mr. Klein's experts and mine.

19 The seven days is the minimum that it's going to take
20 to turn this around. So that's what I would request.

21 And similarly, to Mr. Lanciotti who has two bellwether
22 plaintiffs whose houses they still live in or are owned by
23 relatives, Your Honor, I don't see any reason why by July 20th
24 we can't have all 12 dates selected to be done, you know,
25 before the end of August.

1 THE COURT: Yeah. That seems reasonable. Why can't
2 we do that?

3 MR. STERN: We potentially can, Your Honor, but I need
4 to know how many you're planning on doing per week. Because we
5 have hired an expert to attend the depositions. And it's not
6 just a matter of scheduling with our individual parents of
7 plaintiffs, but we have to have our experts present to observe
8 the -- to observe the inspection.

9 MR. ROGERS: We can do one per day.

10 MR. STERN: Okay.

11 MR. ROGERS: So that would be, assuming business days,
12 five per week. Since you have 10, that would be two weeks or
13 spread out over the 30 days.

14 But we think it might be possible to do two in one
15 day. But since we haven't done any yet, Your Honor, you may
16 recall, we talked about this ...

17 THE COURT: Yeah.

18 MR. ROGERS: We need to get a few under our belt. If
19 it turns out that we can, we will, you know, make that known
20 and everyone will know.

21 But one per day, Corey.

22 MR. STERN: Okay. So on July 20th, I will provide
23 dates to the extent that I can for every single one of the 10
24 plaintiffs over the course of what you said was 30 days,
25 correct? Even though you would like to do one per week.

1 MR. ROGERS: One per day.

2 MR. STERN: I'm sorry. One per day over the course of
3 30 days. You said you have a month to do them, correct?

4 MR. ROGERS: That would be the last opportunity that
5 we would have to comply with the Court's order. The sooner the
6 better, but that would be the answer.

7 MR. STERN: I understand. All I'm saying is that it's
8 not as easy to get 10 plaintiffs on 10 days with one inspector
9 for all 10. And if I know that there's a 30-day window, then
10 it will be easier for me on the 20th to provide you with dates
11 over 30 days for 10 plaintiffs, than it would be over 10 days
12 for 10 plaintiffs.

13 MR. ROGERS: That's exactly what I want.

14 THE COURT: It will be over 30 days. That's what he's
15 offering.

16 MR. ROGERS: Yes.

17 MR. STERN: Thank you.

18 THE COURT: And, Mr. Lanciotti, that will go for your
19 clients as well, okay?

20 MR. LANCIOTTI: Yes, Your Honor. We'll coordinate
21 with Mr. Stern and make sure that we're not proposing the same
22 dates for our plaintiffs over the 30-day course.

23 THE COURT: Okay. And, Mr. Stern, at one point in
24 there you said I'll get these dates to you by July 20th as best
25 I can or something like that.

1 MR. STERN: I'm going to get every one --

2 THE COURT: If you can do it. I want you to do it, of
3 course. But if there is some emergency, et cetera, be sure on
4 the 20th by the close of business to notify me through an
5 E-mail to Abigail DeHart if there's a reason that one is a
6 straggler out there.

7 MR. STERN: No problem, Your Honor.

8 THE COURT: And give me a proposal for how you're
9 going to resolve it.

10 MR. STERN: Okay.

11 MR. ROGERS: Your Honor. May I give the Court some
12 information about moving forward? As you may recall, there
13 were four houses that bellwether plaintiffs used to live in
14 that are now owned or occupied by others. We've taken the
15 steps necessary to request inspections of those homes. We've
16 sent letters pursuant to the CMO to the owners. Thus far, we
17 haven't received a positive response from those folks to allow
18 us to inspect their home.

19 We're on the verge of, perhaps, having to go to the
20 point of issuing subpoenas and requesting that they be
21 enforced. We don't want to have to do that. But I just alert
22 the Court that there are an additional four that are beyond the
23 plaintiff's control and we may have to seek assistance from the
24 Court in getting those done. But it's an absolute last resort.
25 We're trying not to have to do that. But it may be that we'll

1 come to you and ask for assistance at some point over the next
2 six weeks or so.

3 THE COURT: Okay. I'm not surprised.

4 But I'll be ready for that. Thank you.

5 MR. ROGERS: Thank you.

6 MR. STERN: And just to be clear, Your Honor, we have
7 no control over those people. We don't represent those people.

8 THE COURT: I know that. Yeah.

9 MR. STERN: Okay.

10 THE COURT: Yeah. I know that.

11 And maybe, Mr. Rogers, you'll figure out that what
12 you're learning from these home inspections may, for instance,
13 maybe those four instances not do it and still go forward. But
14 we'll figure it out when we need to.

15 MR. ROGERS: Yeah.

16 THE COURT: Okay. Thank you everybody for your time.
17 Stay healthy and safe and well. Things are not going in the
18 direction we want them to with this virus. So I appreciate all
19 of the contributions that you're making to ensure the whole
20 community safety and well being.

21 So I think the next time I'll see you is on the 29th
22 and we'll go from here. So thank you very much.

23 (At 3:47 p.m., matter concluded.)

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C E R T I F I C A T E

I, Darlene K. May, Official Court Reporter for the United States District Court, Eastern District of Michigan, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability, from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

July 28, 2020
Date

/s/ Darlene K. May
Darlene K. May, CSR, RPR, CRR, RMR
Federal Official Court Reporter
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